14/15

S. Kanara 1/55

1955

K

File No.

Legal DEPARTMENT

Examined E BRANCH

Subject:— Suits... Kanara

C.S. No. 149 of 1954

R. K. Boloor :- - - - Plff.

V/S

The State of Bombay -.- .Deft.

For the recovery of the amount of Rs. 183/- being the price of the furniture and interest of Rs. 15-7-0 together with costs.

281/E

File No. S. Kanara 1/55

Std Scott Slip 21-B

1/55

Below monthly return for the month of October 1954,
from the District Government Pleader of Kanara

No. 26366/E
Office of the
Remembrancer of Legal Affairs,
Bombay Castle, 20-11-1954.

Forwarded with compliments to the Collector of Kanara, with a request that the report and papers regarding Suit No. 149/54 mentioned in the return may be submitted at an early date in accordance with rule 118 of the Law Officers' Rules.

By order,

for Remembrancer of Legal Affairs.

HSP/2?/6

Issued 20/11

Subhas. for Sign

19/11

S. 3

From:

The District Government Pleader, Kanara.

To

The Remembrancer of Legal Affairs, Bombay.

No. 722 of 1954. Karwar, dated 15-11-1954.

Sir,

O.S.No.149-1954 filed by one R.K.Boloor of Kumta is fixed forfiling written statement on 13-12-1954. I have already asked the Poultry Officer of Poona to expedite submitting his report under Rule 118 and also to send the copy thereof to me.

Yours faithfully,

Dist.Govt.Pl.Kanara.

33699
20/11/54

C.S. No. 149/54

Subject:-Suit against State by Shri R.K. Bolur of Kumta.

.....

No.TRA 6273.
Karwar, 7-12-1954.

L.D. 11 DEC 1954

Letter.

To

The Poultry Development Officer,
Bombay State, Poona 3.

The Remembrancer of Legal Affairs, Bombay has intimated to me under his No.26366/E dated 20-11-1954 to send a report and papers regarding the above suit in accordance with rule 118 of the Law Officers Rules. You have already been intimated under this office even number dated 11-11-1954 for drafting such report and to take further action.

However you are once again requested to send the report to the Remembrancer of Legal Affairs as required by him.

7/12

P.A.,
for Collector of Kanara.

THE SECRETARY TO GOVERNMENT,
LEGAL DEPARTMENT,
File No. 35885
Sub No.
Sch
11/12/54

Copy w.cs. to Remembrancer of Legal Affairs, Bombay with reference to his No.26366/E dated 20-11-54.

Submitted for information
Event Report

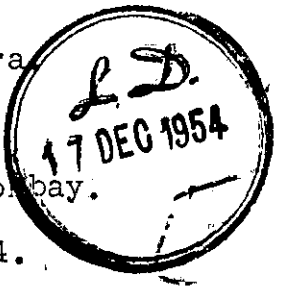
11/12

11/12

7 7

From:

The District Government Pleader, Kanara.



To

The Remembrancer of Legal Affairs, Bombay.

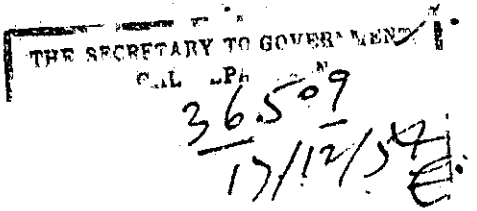
No. 802 of 1954. Karwar, dated 13-12-1954.

Sir,

O.S.No. X 149-1954 had been fixed for putting-in appearance of the defendant on 11-11-1954. On that day I appeared for the defendant. It was adjourned till today. I have put-in an application for adjournment. This is 2nd adjournment. I, therefore request you to kindly expedite sending the lines of Defence as the Court will not grant more than 10 days time on this occasion. The Civil Judge is on leave today and the next date will be fixed tomorrow.

Yours faithfully,

Dist.Govt.Pl.Kanara.



No. 29130/E — 9-4
Legal Department,
Bombay Castle, (Bombay 1) 23 December, 54

The Poultry Development Officer,
Bombay State,
Poona 3.

Sub: C.S.No. 149/54
R.K.Bolur of Kumta Vs.
The State of Bombay.

Sir,

With reference to the subject noted above, I have the honour to invite your attention to the Collectors letter No.TRA 6273 dated the 7th December 1954 and to request you to send your report under rule 118 of the Law Officers Rules immediately.

Yours faithfully,

for Remembrancer of Legal Affairs.

Copy to the District Government Pleader, Karwar.

Submitted for signature
VK 22/12 Sol (NL)

Nair/22/12/- Issued 23/12

New air report rules rule 116

VK
23/12

S S

11

No AH/PDS/3751 of 1954.
Poona, 31 December, 1954.

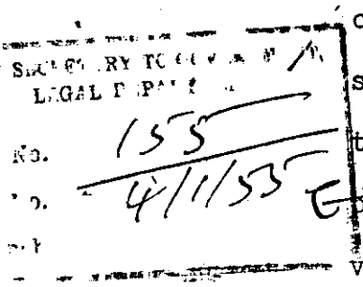
To

The Remembrancer of Legal Affairs,
BOMBAY.

Subjcet:- Report under Rule 118 of the Law Officers Rules.

In compliance with Rule 119 of the Law Officers Rules, I forward herewith the report submitted by the Poultry Development Officer, Bombay State, Poona, in connection with the Civil suit filed by Shri.R.KBolur of Kumta against Government in the Court of the Civil Judge, Senior Division, Karwar.

Although the Poultry Development Officer has suggested that the claim of the plaintiff is inadmissible and that the suit can defended, I am to invite particular attention to the two writing (i) Receipt dated 26th July 1951 acknowledging receipt of the furniture from the plaintiff and promising payment by 15th August '51, and (ii) letter dated 19th November 1951 stating that payment would be made immediately on receipt of funds from Karwar) passed by the Manager, Poultry Farm, Kumta, to the plainfiff. These two documents virtually amount to an admission on the part of the Manager that the furniture which is the subject-matter of the suit was received from the plaintiff and that the cost thereof was to be paid by Government to the plaintiff. This appears to be quite inconsistent with the version contained in the report, and the inferences raised by the said piece of evidence appear to be almost unrebuttable.It is also for consideration whether it would be possible for Government to deny liability in respect of the transactions evidenced by the two douuments, saying that the same were intered into by the Manager in his private capacity and not as a Government Official.The fact, however, that the Manager had purported to act on behalf of Government in passing the said writings and had used his official designation throughout these transactions would appear to undermine our defence on the said ground.



In view of the above, it is for consideration whether it would be possible to resist the claim of the plaintiff and defend

P.T.O.

the suit.

VNP/-31.12.

For Director of Agriculture,
B.S., Poona.

13 12

REPORT UNDER RULE 118 OF THE CONDUCT OF LEGAL AFFAIRS OF GOVERNMENT.

.....

1. i) No. of the Suit:- Civil Suit No. 149.

ii) Date on which and Court in which it was instituted:-
(a) 24th day of September, 1954-
(b) In the Court of Civil Judge, Senior Division, Karwar.

iii) The names of all the parties:-
(1) Shri R.M.Patil, Poultry Development Officer, Bombay State, Poona.

Names of Plaintiff as well as Defendants are required to be given.

(2) Shri R.M.Heblekar, Then Manager of Govt. Poultry Farm, Kumta now as Agril. Assistant at Poultry Farm at Agricultural School Kolhapur.

(3) Shri M.V.Bhagwat, Supdt. Agricultural School, Kumta, North Kanara.

(4) Shri Mahableshwar Kalappa Achari, Proprietor M/s. Samarth Industrial Works, (Kumta), North Kanara.

iv) The amount or value of the claim:-
Rs.183/- Price of articles.
Rs.5/7/- Interest.

Rs.188/7/- Total.

(v) The date fixed by the Court for the first hearing:-
11th November, 1954 was fixed for first hearing. The District Govt. Pleader, Kanara applied for time to put in written statement.

(vi) Whether Notice of the action has been given under sec. 80 of the C.P.C. and if so the date of the delivery of such notice:-
Yes. On 16th July, 1954 it was received by the Collector of Kanara and was forwarded to this office which was received on 26th July, 1954.

2. (a) A copy of the plaint is sent herewith.

(b) Necessary notings have been made in the margin of the copy of the plaint.

(c) (i) Full detailed statement showing the circumstances which led to suit is enclosed herewith.

(ii) It is proposed that the suit should be defended in view of the reasons given in item (iii) below:-

(iii) Defence based and evidence to be adduced:-

The order for supply of furniture was given to M/s. Samarth Industrial Works Kumta,

15 T

Kumta through the Superintendent Agricultural School Kumta. Shri R.K.Boloor had sent quotation but the same was not considered, his rates being costly. Shri R.K.Boloor's plaint for supply of furniture to the Govt. Poultry Farm, Kumta, therefore, does not arise. If he has anything to show and claim he may file a suit against the proper party.

9(Claim)

The Superintendent Agricultural School Kumta and the Manager I/c Govt. Poultry Farm Kumta were not authorised to accept furniture from sub-agents. The full amount was drawn by the Manager in two instalments to pay to the authorised contractor - M/s. Samarth Industrial Works, Kumta. The receipts for the same have been sent by the Manager from M/s. Samarth Industrial Works. The supply of furniture has been made in full to the Govt. Poultry Farm, Kumta as per orders from the Poultry Development Officer, Bombay State, Poona.

(d) If the case turns on documentary evidence, copies of the same or the originals relied on by the plaintiff if procurable and by the defence:-

9 Copies of the documentary evidence relied on by the Plaintiff are attached herewith. These cannot be accepted as Manager I/c Govt. Poultry Farm, Kumta was not authorised to do so by the competent authority.

(e) All correspondence and written proceedings:-

Copies of all correspondence are sent herewith as stated in item (c) (i) above.

(f) A statement containing documents in (d) & (e) is attached herewith.

(Papers concerning items (b)&(c) above are sent herewith in duplicate).

R.N.Patil.

Poultry Development Officer,
Bombay State,
Poona 3.

sGc:

.....

Full detailed statement showing the circumstances which led to suit, as referred in para (c) of the report.

.....

1. Order for supply of required items of furniture was placed with M/s. Samarth Industrial works, Kumta, (North Kanara) through the Superintendent Agricultural School, Kumta, as per this office No. 5320 dated 24th August, 1950 (copy attached) (Exh. A). This was done after inviting local dealers quotations.

2. The Manager Govt. Poultry Farm, Kumta reported that two items of furniture i.e. 1 Cupboard for eggs and 1 table were supplied by M/s. Samarth Industrial Works, Kumta and that the said Contractor is demanding an advance of Rs. 100/- for supply of the remaining items of furniture as per letter No. 1/20 dated 9th January, 1951 from the Manager Govt. Poultry Farm, Kumta, copy attached (Exh. B).

3. The Manager Govt. Poultry Farm, Kumta was replied that the Contractor cannot be paid any advance as per financial rules and was informed that he should get the material from the Contractor without any loss of time as per this office No. 203 dated 13-1-1951 copy attached (Exh. C).

4. One application dated 2-6-1952 was received from Shri R.K.Boloor, addressed to the Collector and the Chairman of the Rural Development Board, Karwar and copy to this office.(Exh. D).

5. The application dated 2-6-1952 was referred to the Superintendent Agricultural School, Kumta for remarks. The Superintendent's remarks together with an explanation of the Manager, Govt. Poultry Farm, Kumta were received under his endt. No. 35/1028 dt. 17-6-1952 copy attached. (Exh. E).

6. Further a reference was made to the Superintendent Agricultural School, Kumta to clarify as to how Shri R.K.Boloor had supplied the remaining items of furniture to the Manager Govt. Poultry Farm, Kumta. A copy of this office No.3253 dated 25-6-1952 is attached (Exh.F).

7. The Superintendent Agricultural School, Kumta's remarks were received under his endt. No. 35/1117 dt. 30-6-1952 together with the Manager's remarks.(copy attached) (Exh. G).

8. Shri R.K.Boloor of Kumta was replied with ref. to his application dated 2-6-1952 that order for supply of furniture was placed with M/s. Samarth Industrial Works Kumta and not with him, and that he has no claim for supply of any furniture to Govt. Poultry Farm, Kumta and that no payment is due to him. Copy of this office No. 3408 dated 3-7-1952 is attached herewith (Exh. H.).

9. Shri R.K.Boloor of Kumta further sent a letter dated 10-7-1952 stating that he holds a receipt of Manager dated 26-7-1951 and a chit dated 19-11-1951 and requested for payment of Rs. 183-0-0 copy attached (Exh. I).

10. After making enquiry through the Agricultural Officer I/c Poultry Breeding, Dharwar, Shri R.K.Boloor was informed that as he was not given a contract for

19 49

Continued.

contract for supply of furniture to Govt. Poultry Farm Kumta, his claim cannot be considered. Copy of this office letter No. 4274 dated 29th August, 1952 is attached (Exh.J.).

11. Shri R.K.Boloor again sent a letter dated 9-9-52 asking for payment of Rs. 183/-, copy attached.(Exh.K.). This was referred to the Superintendent, Agricultural School, Kumta for remarks.

12. Remarks were received from the Manager Poultry Breeding Station, Kumta with the Superintendent's endt. No.35/1752 dated 16th Oct., 1952 copy attached (Exh. L.)

13. Further Shri R.K.Boloor sent a notice from Pleader Shri G.G.Shastri of Kumta, copy of the notice dated 24-3-1954 and the reply sent thereto are enclosed herewith (Exh. M & N).

14. Further Shri R.K.Boloor sent a notice from another pleader Shri V.S.Gokarna of Kumta under sec. 80 of C.P.C. Copy of notice dated 15-7-1954 and a reply sent thereto are enclosed herewith. (Exh. O & P.).

15. After this Shri R.K.Boloor filed a suit against State of Bombay and claimed an amount of Rs. 188-7-0.

R.M.Patil

Poultry Development Officer,
Bombay State,
Poona 3.

sGc:

....

Statement containing documents as referred in item (f) of the report.

.....

S.No.	Document.
1.	Copy of the plaint.
2.	Copy of the plaint with necessary notings against certain paras.
3.	Copy of the order placed with M/s. Samarth Industrial Works, Kumta (Poultry Development Officer's No.5320 dated 24-8-1950) Exh. A.
4.	Copy of Receipt from M/s. Samarth Industrial Works, Kumta accpeting the above order for supply of furniture. (Exh. A-1)
5.	Letter No. 1/20 dated 9th January, 1951 from the Manager Poultry Farm, Kumta (Exh. B).
6.	Letter No. 203 dated 13-1-1951 from the Poultry Development Officer, Bombay State, Poona to the Manager Poultry Farm, Kumta. (Exh. C).
7.	Application dated 2-6-1952 from Shri R.K.Boloor, addressed to the Collector and Chairman of the Rural Development Board, Kanara and copy tothe Poultry Development Officer, Bombay State, Poona (Exh.D).
8.	Superintendent, Agricultural School Kumta's endt. No. 35/1028 dated 17th June, 1952 (Exh. E).
9.	Letter No. 3253 dated 25th June, 1952 from the Poultry Development Officer, Bombay State, Poona to the Superintendent Agricultural School, Kumta (Exh.F.)
10.	Superintendent Agricultural School Kumta's endt. No. 35/1117 dated 30th June, 1952 (Exh. G.)
11.	Letter No. 3408 dated 3-7-1952 from the Poultry Development Officer, Bombay State, Poona addressed to Shri R.K.Boloor (Exh. H.)
12.	Application dated 10th July, 1952 from Shri R.K. Boloor addressed to the Poultry Development Officer, Bombay State, Poona (Exh. I).
13.	Letter No. 4274 dated 29-8-1952 from the Poultry Development Officer, addressed to Shri R.K.Bolur (Exh. J.)
14.	Letter dated 9-9-1952 from Shri R.K.Boloor addressed to the Poultry Development Officer, B.S.,Poona, (Exh. K.)
15.	Superintendent Agricultural School Kumta's endt. No. 35/1752 dated 16th October, 1952 (Exh. L.)
16.	Notice dated 24th March, 1954 from Pleader Shri G.G. Shastri (Exh. M.)
17.	Letter No. 2589 dated 26-5-1954 from Poultry Development Officer, Bombay State, Poona to Shri G.G.Shastri, Pleader (Exh. N.)
18.	Notice dated 15-7-1954 from Pleader Shri V.S.Gokarna, (Exh. O.)

(Continued on page No.2.)

Continued.

19. Letter No. 3924 dated 5-8-1954 from the Poultry Development Officer, Bombay State, Poona to Shri V.S. Gokarna (Exh. P.)

20. Copies of the documents relied on by the plaintiff. (Exh. Q)

21. Copies of the receipts on account of payment made to the Contractor M/s. Samartha Industrial Works, Kumta sent by the Manager Poultry Breeding Station, Kumta (Exh. R)

Rmbatil

Poultry Development Officer,
Bombay State,
Poona 3.

sGc:

....

Plaint
25

Civil Suit No. 149 of 1954.

In the Court of the Civil Judge, Senior Division, Karwar.

R.K.Boloor, age 40, Hindu,
Trader, resident of Kumta....Plaintiff.

V/s.

The State of Bombay.....Defendant.

Claim for Rs.188-7-0.

The plaintiff begs to state as follows:

ShriR.M.Heblekar, Manager of the Government Poultry Farm, Kumta, purchased from the plaintiff in his Kumta shop the following articles of furniture on 26-7-1951 for the office use of the Government Poultry Farm, Kumta for the price shown against each of them and gave a receipt in his own hand to the plaintiff on the same day.

Table one.	Rs. 85--0--0
Chairs three.	Rs. 48--0--0
Stool one.	Rs. 10--0--0
Office rack one.	Rs. 35--0--0
Office tray one.	Rs. 5--0--0
Total.	Rs.183--0--0

The amount of Rs. 183--0--0 due to the plaintiff on account of their price was not paid to him but the said Manager undertook to pay it to him by 15th Aug., 1951.

2. As no payment was made within the stipulated period, the plaintiff began to press the said Manager for payment and he kept on promising to make it. On 19th Nov., 1952 he wrote a chit to

chit to the plaintiff saying that the bill for the amount had not yet arrived from Karwar and that he would clear off the amount without fail as soon as it was received.

3. Inspite of this, no payment was made and therefore the plaintiff addressed a letter on 18th January, 1952 to the Collector of Kanara in his capaity as Chairman of Rural Development Board Kanara as he learnt in the meantime that, that was the proper body to deal with the matter. He also sent a copy of the above-mentioned receipt of ₹ 26th July, 1951 for his information. As no reply was received, the plaintiff sent him a reminder on 7th Feb., 1952 and since this too met with no reply, he had to send by registered post another letter to him on 2-6-1952. It appears that this correspondence was forwarded by him to the Poultry Development Officer, Bombay State from whom the plaintiff received a reply dated 8-7-1952 that the order for the supply of the said furniture was placed with Messrs Samarth Industrial Work, Kumta and not with the Plaintiff and that therefore the plaintiff could make no claim whatever for the supply of the said furniture to the Govt. Poultry Farm, Kumta.

4. Thereafter, the plaintiff addressed a communication to the said officer on 10-7-1952 enclosing a copy of the receipt dated 26-7-1951 and stating all the facts

Bombay State, wrote a letter on 5th Aug, 1954 to the plaintiff's lawyer that the plaintiff was not a bonafide contractor for supply of furniture to the Govt. Poultry Farm, and that therefore his claim deserved no consideration.

7. The plaintiff submits that he is not concerned with the question whether an order for any furniture was or was not placed with Messrs Samarth Industrial Work,Kumta. He has nothing to do with that institution. In the face of the receipt dated 26-7-1951 and the subsequent chit of 19-11-1952 passed by Shri R.M. Heblekar., Manager of the Govt. Poultry Farm, Kumta, the plaintiff's just claim cannot be so summarily dismissed. It is most unfortunate that he should have been kept out of his rightful dues for such a long time. The result is that he has been put to great loss and inconvenience.

8. This suit is therefore instituted for recovery of the price of the articles mentioned above together with interest thereon from the date of the plaintiff's first notice to the Collector and costs. The cause of action for it arose at Kumta on 15th August, 1951 when the price of the articles was to be paid. There is no bar of limitation against this suit as the notice period under section80, Civil Procedure Code has to be excluded.

9. As the cause of action arose within the jurisdiction of this Court and as the suit is against the State of Bombay,

facts of the case. Copies of this letter were sent to the Collector as Chairman of the Rural Development Board, Kanara and the Superintendent, Agricultural School, Kumta. The Plaintiff got from the said Poultry Officer, Bombay State, a reply dated 28-8-1952 refusing to consider his claim for payment on the ground that the contract was not given to him. Another letter of the plaintiff dated 9-9-1952 to the said officer met with no reply.

5. The plaintiff, therefore, sent a lawyer's notice to the Collector of Kanara on 24-3-1954 under section 80 Civil Procedure Code claiming the amount of Rs. 183-0-0 and interest at Rs. 12½ per cent on the said sum by way of damages. In reply, the Poultry Development Officer, Bombay State informed him by his letter dated 26-5-1954 that he was not given any order for furniture by his office and that, therefore, no payment was due to him.

6. As the plaintiff discovered some formal defects in his notice of 24-3-1954 issued to the Collector under section 80 Civil Procedure Code he thought it fit to give another notice complying with the full requirements of that section. Accordingly he sent another lawyer's notice to the Collector under the said section on 15th July, 1954 which reached him on 16th idem. In answer to this, the Poultry Development Officer, Bombay

Bombay, this Court is competent to try it.

10. The valuation of this suit is Rs. 188-7-0 for all purposes.

11. The plaintiff, therefore, prays that a decree be passed against the defendant awarding him the following items:

a) The amount of price of the articles mentioned in para 1 of the plaint.....Rs. 183--0--0.

b) interest on this amount at the reduced rate of 6 % from 24-3-1954, the date of the first notice to the Collector, till date of suit.....Rs. 5--7--0.

Total.....Rs.188--7---0.

and

c) Costs of this suit and such other relief as the court may deem fit.

Sd/- Plaintiff.

I, R.K.Boloor, the plaintiff in this suit do hereby declare that the contents of this plaint are true to my personal knowledte, in token whereof I subscribed my signature unto this at Kumta on 24th day of September 1954.

Sd/- Plaintiff.

.....

Filed on 27th September, 1954.

Sd/- x x x.
Pleaderfor Plaintiff.

True copy.

R.N.Bhatkal

Deputy Director
Land Records

35 - 5

In the Court of the Civil Judge, Senior Division, Karwar.

O.S.No. 149-1954.

R.K.Boloor ..... Plaintiff.

Vs.

State of Bombay .... Defendant.

Written Statement of the Defendant:

1. It is not true that Shri R.M.Heblekar who was manager of the Government, Poultry Farm Kumta had purchased from the Plaintiff in his Kumta shop the articles mentioned in plaint para 1 for Rs. 183-0-0 on 26-7-1951.

2. Shri Heblekar had not been authorised to make any such purchases on behalf of the Government. Therefore even if it transpires that he had made such purchases, the plff cannot hold the defendant responsible to pay the price thereof, specially in view of the circumstances mentioned below. There was no legal agreement between the Plff and any duly authorised person on behalf the Defendant and therefore the Plff cannot enforce his remedy against the Defendant in the absence of any legal contract.

3. Order had been placed by the Poultry Department Officer Bombay State, Poona with M/S Samarth Industrial Works, Kumta on 24-8-1950 for 7 items of furniture. Item No.1 was a table and item No.2 was cupboard. Items Nos. 3 to 7 are the items of furnitures now mentioned in the plaint. This contract had been placed with M/S Samarth Industrial Works by the Poultry Development Officer and not by Shri Heblekar, Manager of the Government Poultry Farm, Kumta. The latter had no authority to make any purchases. The Poultry Development Officer had placed this order for furniture after inviting quotations from local dealers. This order had been despatched to said Samarth Industrial Works through the ~~Manager of the Government Poultry Farm~~ Superintendent Agril School and an authorised peon of the Samarth Works, Kumta, on 28-8-1950. No such order had ever been placed with the plaintiff, nor had he preferred any Bill for such furniture said to have been supplied by him.

4. On 9-1-1951 the Manager, Government Poultry Farm Kumta intimated by his letter No.1/20 of 1951 to

Poultry Development Officer that the Proprietor of Shri Samarth Industrial Works had already delivered one cupboard and one table and that he has already been paid for the two items and that for the remaining articles the Proprietor of ~~the~~ Shri Samarth Industrial Works was demanding an advance of Rs.100/- against the remaining items costing Rs.183/-.

5. The Poultry Development Officer sent his reply No.203 dated 13-1-1951 to the above letter that the furniture ought to have been received by that time and that the contractor could not be paid any advance as per Financial Rules. If any advance has been paid by the Manager it was his responsibility to get the material without any loss or time. Thus the manager had not been authorised to make any purchases from any other person.

6. On 2-6-1952 an application was addressed by the Plaintiff to the Collector and the Chairman of the Rural Development Board and a copy thereof had been sent to the Poultry Deveopoment Officer, Poona. Therein he asserted that he had not received payment but in the said application he further said that he had come to know that the cash payment regarding the furniture purchased had been made to someother person who had not actually supplied the furniture. On enquiry with the Manager he submitted his remarks on 16-6-1952 and on 17-6-1952. Therein he asserted that he had not placed any order for furniture but that the order had been placed directly by the Poultry Development Officer Poona with M/S Sarmarth Industrial Works. He denied having placed an order with the Plff. He denied having received any Bill from the Plff.. He further asserted that payment had been made to the party concerned vi-z. M/S Samarth Industrial Works.

7. A reference was also made to the Superintendent Agricultural School Kumta to clarify as to whether the ~~how~~/Plff could have supplied the items of furniture to the Manager, Government Poultry Farm Kumta. This reference was made on 25-6-1952.

8. The Plff appears to be a dealer in furniture and quotations had been received from him independently of the quotations given by Samarth Works. But the rates quoted by him had not been accepted by the Poultry Development Officer. Therefore question

37 57

arose as to whether the Plff had supplied the furniture in question as an Agent of Samarth & Co;, with whom the contract had been placed.The order had been placed with Samarth Works through the Superintendent, Agricultural School Kumta and not through the Manager of the Government Poultry Farm. Hence this enquiry was made with the Superintendent.

9. In his letter dated 30th June 1952, the Superintendent of the Agricultural School Kumta informed the Poultry Development Officer, Poona that the order had been placed with the Proprietor Samarth Industrial Works Kumta. He further reported that the Plff had supplied the furniture on behalf of the Proprietor Samarth Industrial Works Kumta as agreed between this Proprietor and the Plff The Manager Government Poultry Farm Kumta asserted that the amount of Rs.183/-, had been drawn on 7-3-51 and had been paid in full settlement to the Proprietor of Samarth Industrial Works in advance and that he had obtained a stamped receipt for the same in advance, as no account is allowed to be kept pending under the Grant for the year 1950-51 after the end of March. Thus the sum of Rs.183/- had been paid to Samarth Works,Kumta, as price of the furniture mentioned in the suit. Thus the Government had already paid for the furniture mentioned in the suit.

10. In reply to his application dated 2-6-52 the Plff was informed that the order had been placed with Samarth Industrial Works,Kumta and that he has no claim for supply of any furniture to Government Poultry Farm and that no payment was due to him.

11. On 10-7-52 Plff further sent a letter stating that he holds a receipt of the Manager dated 26-7-51 and a chit dated 19-11-51 from said Manager Shri Heblekar.-It appears that said Manager had either acted irresponsibly and beyond the scope of his duties or that the said two documents might have been obtained from him

in collusion by the Plff to assert his present claim. In any case it is not true that the said Manager had been authorised to make any purchases from the Plff and it is not true that Plff had supplied the furniture on his own account. Therefore the Defendant is not responsible to pay the said amount to the Plff. The Plff is at liberty to sue Shri Heblekar independently, if he so chooses.

12. After making enquiry through the Agricultural Officer, I/C Poultry Breeding, Dharwar the Plff was informed in reply to his above letter that no contract had been given to him and that his claim could not be considered.

13. The plff again addressed his letter dated 9-9-52 repeating his demand. This was referred to the Superintendent, Agricultural School, Kumta for remarks. Remarks were received from the Manager Pultry breeding station Kumta with the Superintendent's endorsement on 16-10-52 saying that no payment was due to the Plff.

14. Plff then sent his notice dated 24-3-54 intimating that he would file a suit against the Government. Thereafter ~~he again issued another notice~~ His pleader Shri Shastri was informed on 26-5-54 that no order had been placed with the Plff and that no payment was due to him.

15. Yet another notice was issued by the Plff through another pleader on 15-7-54. A reply was sent to this pleader on 5-8-54 that the claim cannot be considered.

16. In view of these circumstances it will be clear that there has been no legal and valid contract betwen the Plff and the Govt and the two documents relied upon by him are unauthorised and not binding on the Government. The said Manager was not authorised to sign such documents nor are they issued on behalf the Deft and therefore they are not binding on the Deft.

17. This suit appears to have been filed on 24-9-54. The Plff had to file this suit within 3 years from the date of the alleged purchase i.e. on or before 26-7-54. The mere fact that he had issued a second notice on 15-7-54 will not enable him to extend the period of limitation. This suit filed after 26-7-54 is not

39

in time.

18. In view of these facts as narrated above all the contentions made by the Plff in the plaint are denied.

19. The allegations made in plaint para 7 are denied. Whether the Plff had anything to do with the Samartha Industrial Works or not the Deft is not responsible to pay the price of the Articles mentioned in the plaint as the Manager had no authority to enter into any contract or to purchase any articles on behalf of the Government.

20. The defendant is not liable to pay any interest.

21. The cause of action has been wrongly mentioned as 15-8-51. There was no legal contract with the Plff binding on the Deft to the effect that the amount should be paid on 15-8-51. The alleged contract mentioned in para 8 of the plaint is denied. It is not valid and binding on the Defendant.

22. The plff's suit therefore deserves to be dismissed with costs.

V. S. K. Kamath

URGENT PLEASE.

41

From:

The District Government Pleader,Kanara.

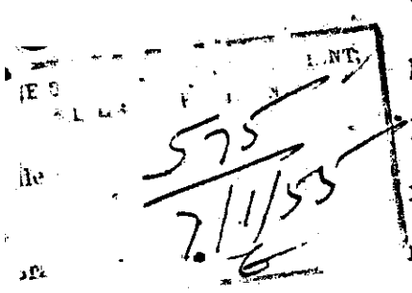
To

The Remembrancer of Legal Affairs, Bombay.

No. 1 of 1955. Karwar, dated 3rd January 1955.

Sir,

Civil suit No.149-1954 filed by R.K.Boloor against the Government is fixed on 4-1-1955 for the 3rd time for filing the written statement. As already intimated to you the Civil Judge of Karwar does not grant more than 10 to 15 days adjournment for the 3rd time. He never grants the 4th adjournment. I have therefore drafted the W.S. and forwarded the same herewith for your approval. On the 4th instant I will apply for an adjournment and intimate by wire the next date fixed. I request you to inform me by wire your approval and to expedite your reply if you have to suggest any changes in the draft written statement. I have drafted the W.S. on the strength of the copy of the report submitted to you under Rule 118 and its accompaniments.



Yours faithfully,

Dist.Govt.Pl.Kanara.

Submitted for marking

7/1

Sol (H.G.) shall Inward

7/1

43 2

840
To/1/55 E

L.D.
8 JAN 1955
E

1047

INDIAN POSTS AND TELEGRAPHS DEPARTMENT

सत्यमेव जयते

Class
Prefix } .....Code..... No. C.

Recd. from _____ Sent at _____ H. _____ M. Office Stamp

By _____ To _____

By _____

Handed in at (Office of Origin)	Date.	Hour.	Minute.	Service Instructions.	Words.

TO

Recd. here at H. M.

X LB KARWAR KNA 8 STE 35 SECLEX BOMBAY -

YOUR LETTER 229E 5TH INSTT ORIGINAL SUIT 149 FIXED 12TH INSTT

FOR WRITTEN STATEMENT NO FURTHER TIME POSSIBLE PLEASE EXPEDITE

APPROVAL OF DRAFT WRITTEN STATEMENT WIRE APPROVAL -- GOVT PLEADER

KANARA --

N B.—The name of the Sender if telegraphed shall be written after, but not

[illegible]—REGISTERED 7 V. 53—7 lakhs. 4170/6P 177 P&T—27.6.52

T. I. अपना तार हिन्दी में भेजिए

TELEGRAM No. 1047

Rec'd at 2.50 P.M.

"X" (STE) W/DS 10/45 TO 17/30 SAT.. TO 14 M SECRETARY TO GOVERNMENT OF BOMBAY, LEGAL DEPTT., AND REMEMBRANCER, OF LEGAL AFFAIRS., SECRETARIAT. WK/DS 17/30 TO 10/45.SAT.AFTER 14. SUN.& H/DS O TO 24. SECRETARY TO GOVERNMENT OF BOMBAY. LEGAL DEPTT., & REMEMBRANCER OF LEGAL AFFAIRS, C/O RESIDENT DY.SECY., SECRETA

Legal Depart

1) See the letter dated 2nd Jan 1953 and the note received on 10/1

The date fixed is 12th and no further adjournment is possible.

2) See the report in the case and the letter dated by the Director of agriculture

3) Report of the Poultry officer is contradictory to the contents of the letter dated by the Director of agriculture

4) The Suit is filed by one Bdun against the State of Bombay for recovery of the price of the goods ordered & supplied. -The Report of the Poultry officer states that the managers of the poultry farm has no authority to place an order for the

the place of Bombay. So. The
letter written by the manager and
the receipt acknowledged by him
are unauthorised as such
not binding on the state. It
is the claim of the Public Officer
that the Govt has not placed
any order with the plff for supply
of the articles mentioned in the
plaint so the state of Bombay
is not responsible for the suit claim.
The Director of agriculture is raising
a defence set up by
the Public Officer.

5) The Draft written statement is prepared
on the lines of the report of the Public
Officer. The draft may be approved
if the Public Officer's report is accepted. However
the stand taken by the D of A cannot be accepted

as it ~~not~~ will be. Counter mand
to the acceptance of the Plts claim
If therefore, Submitted that
the Draft not in the case
to ~~be~~ may be accepted & the
D.G.P may be informed by wire

Orig
11/1

SOL (Mrs) Lee
11-1

Immediate/Express

Under

49

From:

The District Government Pleader, Kanara.

To

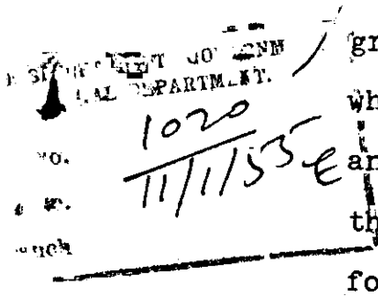
The Remembrancer of Legal Affairs, Bombay.

No. 33 dated 8th Jan. 55.

Sir,

I am in receipt of your letter No.229/E dated 5th instant asking me to obtain further time for 2 monthis in O.S.No.149 -1954. I have already intimated to you that the Civil Judge of Karwar is not prepared give any extra concession in Government suits. For the first time we get 30 days' time from the date of service of summons. For the second time he grants an adjournment of 2-3 weeks. For the third time he grants an adjournment only of one week or 10 days. This suit was fixed on 4-1-1955 and on that day for the third time I applied for an adjournment and the suit has been fixed on 12-1-1955.

In O.S.No.86-1954 he refused to grant the fourth adjournment and therefore when the W.S. was produced he ordered the Government to pay down Rs.40/- out of the plff's costs irrespective of the result. Time and again I have pointed out my difficulties and yet you have asked me again to ask for 2 months' time. But the Civil Judge will not grant the 4th adjournment. In view of this delicate situation which I have the misfortune to face I have drafted the W.S. and forwarded the same to you on the 5th instant. I have therefore to request you to intimate by wire your approval for the same. If no approval is received I will file the W.S. as per my draft and if any changes or additions are suggested by you I will have to seek amendment of the W.S. thereafter. This situation is creating unnecessary complications and correspondence. I therefore feel it to be my duty to suggest to the Government to find a way out to move the High Court to issue Circular Orders to grant sufficient time of at least 6 months from date of service of the suit summons in all suits against Government, after pointing the special difficulties which confront the



Government in getting the W.S.'drafted.

Yours faithfully,

Dist.Govt.Pl.Kanara.

EXPRESS

STATE

District Government Pleader,
Kanara,
Karwar.

NO. 776/E

STATEMENT ~~TELEGRAM~~ DRAFT WRITTEN

IN CIVIL SUIT NO. 149/54 APPROVED

SECLEX

Legal Department,
Bombay Castle (Bombay No.1), 11th January 1955.

Copy by post.

for Solicitor to Government,
Legal Department,
Bombay.

No. 16844/12 53 L.

Office of the
Remembrancer of Legal Affairs,
Sachivalaya, Bombay, ~~July~~, 1955.
/-8

Sub: C.S. No. 149 of 1954.
Shri R. K. Boloor V. State of Bombay.

Memorandum.

With reference to the above subject, the District Government Pleader, Kanara is informed that the case papers in the above suit are sent herewith and he is requested to defend the suit on the lines of the written statement already filed.

O/C

for Remembrancer of Legal Affairs.

To

The District Government Pleader,
Kanara, Karwar.

Low Coi
T/C

Submitted for signature
after revising the draft
put up by Shri Chitnis
Sol Asst
29/7

55 1

No. 726 of 1955.
Karwar, 12-8-1955.

From

The District Government Pleader,
Kanara, Karwar.

To

The Remembrancer of Legal Affairs,
Bombay.

Sir,

Subject:- O.S.No.149-1954 filed by R.K.Boloor.

The above quoted suit filed against the State in connnection with furniture purchased by the Poultry Development officer has been dismissed with costs to-day. I had to examine the Poultry Development Officer as a witness in the suit. His T.A.Bill of coming and going from Poona has not been allowed to be taxed in the costs on the ground that he was examined not as a witness but as a representative of the Govt. Copy of the decree and judgment will follow.

Yours faithfully,

Dist.Govt.Pleader,Kanara,
Karwar.

23797
E
17/8/55

LD

Submitted.

CS No 149/54

allowed in favour of Govt

But no TA Bill of Poultry

Development Officer has been

allowed & he taxed with the

costs

VK

22/5

Sd/- (illegible)

23-8

Suits:-
Kanara.

For the recovery of the amount of Rs.183/- being theprice of the furniture and interest of Rs.15-7-0 together with costs.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 19171/E
Bombay Castle, 30-8-1955.

Letter from the Director of Agriculture, B.S.,Poona dated the 31st December 1954 forwarding the papers in the suit noted in the margin and requesting sanction to its defence.

In the Court of the Civil Judge,(Senior Division), Karwar.

Civil suit No.149 of 1954.

R.K.Boloor..... plaintiff.
vs.
The State of Bombay..... Defendant.

RESOLUTION: Sanction is accorded to the defence of the suit on the lines of the Written Statement filed by the District Government Pleader, on the 12th January 1955.

By order and in the name of the
Governor of Bombay,

27/8

D.P.Shikhare,
Deputy Secretary to Government.

To

* The Agriculture and Forests Department,

* The Director of Agriculture, B.S.,Poona,

The District Government Pleader, Kanara-Karwar.

---

* with a copy of the written statement.

KML/25

Submitted for signature.
PPN
26/8
JS URe 27/8
DS(Civil)

... .

Submitted .....

2S Fikri, S Kamasa, SST (New)

31/8 Supdt IRC 31/8

No. 725 of 1955. 54 63
Karwar, 11th August 1955.

From

The District Government Pleader,
Kanara, Karwar.

To

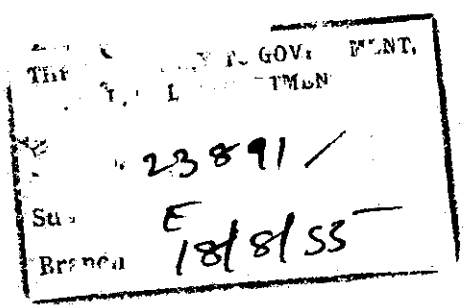
The Remembrancer of Legal Affairs,
Bombay.

Sir,

I am in receipt of your letter No.16844-E, dated the 1st inst. and its accompaniments. There are no original papers therein. The suit has been argued on the date of the receipt of these papers and the judgment will be delivered perhaps to-morrow. As the papers sent by you are not required by me I have returned them herewith.

Yours faithfully,

Dist.Govt.Pleader, Kanara,
Karwar.



In the Court of the Civil Judge,
Senior Division, Karwar.
O.S.No.149-1954.

Pleaders.

Shri V.S.Gokarn. R.K.Boloor, aged 40, Hindu, trader, resident of Kumta ... ... Plaintiff.

against

Dist.Govt.Pleader. The State of Bombay.

Claim - Rs.188-7-0.

x x x x x x x

Order.

Suit is dismissed with costs but with this modification that the costs of examination of Patil - the Poultry Development Officer having been disallowed should not be included in the bill of costs against Plff.

12/8/1955. Sd.M.M.Shirkol,
Civil Judge, S.D.

Bill of Costs.

Plff.	Deft.	Rs. a. p.
x x x x x	Stamps on Exhs.7,8,11, 17,19,22 & 24...	4- 4-0
	Stamp for Bhatta Exh.24:	0-15-0
	Potgi,Exhs.25 & 27:	15- 0-0
	Pleader's fees:	18-12-0
	Exh.79 costs re: bill preferred by the Poultry Development Officer:	74- 2-0
	Total -	113- 1-0

Given under my hand and the seal of the Court this 12th day of August 1955.

Sd.M.M.Shirkol,
Civil Judge,S.D.

Plff's Pleader: Sd.V.S.Gokarn.

Deft's Pleader: Sd.B.S.Mavinkurve.

" TRUE COPY "

District Government Pleader,
Kanara,Karwar.

63 57

No.1126 of 1955.
Karwar, 22-12-1955.

From

The District Government Pleader,
Kanara, Karwar.

To

The Remembrancer of Legal Affairs,
Bombay.

Sir,

With reference to your letter No.26851/E, dated the 1st inst. I am sending herewith an uncertified copy of the judgment in Civil Suit No.100-1953 filed by Smt. Laxmibai Narayan Wagle against the State of Bombay, which was decided on 30-8-1955.

I am also sending herewith uncertified copy of judgment in Civil Suit No.149-1955 filed by Shri R.K.Boloor against the State of Bombay, which was decided on 12-8-'55.

Yours faithfully,

Asstt.D.G.P. 22/12
for District Government Pleader,
Kanara, Karwar.

65-11

In the Court of the Civil Judge,

Senior Divison, Karwar.

O.S.No.149-1954.

Mr.V.S.Gokarn. R.K.Boloor, age 40, Hindu, trader, resident of Kumta... Plff.

vs.

D.G.P. The State of Bombay... Deft.

Claim - Rs.188-7-0

This is a suit against Govt for the recovery of Rs.183 as the unpaid price of furniture supplied to the Govt Poultry Farm, Kumta together with interest of Rs.5-7-0 thereon till date of suit.

The Plff is a trader in furniture. He is a resident of Kumta. He makes out the following case in his plaint. Mr.R.M.Heblekar, the manager of the Govt Poultry Farm at Kumta purchased on credit from his shop at Kumta the following articles of furniture on 26-7-1951 for the office use of the Govt Poultry, Kumta for the price shown against each of them and gave a receipt in that behalf. The purchased articles of furniture were :

One table..	Rs.85/-
Three chairs..	Rs.48/-
One stool...	Rs.10/-
One office rack..	Rs.35/-
One office tray..	Rs. 5/-
Total -	Rs. 183/-

Mr.Heblekar promised to pay this amount by 15-8-1951, but failed to pay as promised. On 19-11-1951 he wrote a chit to Plff saying that the bill for the amount had not yet arrived from Karwar and that he would clear off the amount without fail as soon as it was received. Inspite of this, no payment was made. Plff then addreseded a letter on 18-1-1952 to the Collector of Kanara informing him about the purchases of the articles and the non-payment of price. No reply was received from the Collector. He then addressed a second letter to him on 2-6-1952. But it seems the Collector forwarded these letter to the Poultry Development Officer, Bombay, State from whom

he (Plff) received a reply dated 3-7-1952 that the order for the supply of the said furniture had not been placed with him but with Messrs Samarth Industrial Works,Kumta and that therefore he could not make any claim in respect of any supply of furniture made by him to the Manager, Kumta Poultry Farm.

Thereafter Plff addressed a further communication to the said officer on 10-7-1952 enclosing a copy of the receipt dated 26-7-1951 and stating all the facts of the case. But the Poultry Development Officer of the Bombay State by his reply dated 28-8-1952 refused to consider his case for payment on the same old ground. Plff then sent a lawyer's notice to the Collector, Kanara and filed this suit for the recovery of the amount as stated above.

2. The Govt Pleader on behalf of the Govt has put in his W.S. at Exh.9. He resists the claim made by the Plff. The Govt version of the case is as follows: The Poultry Development Officer, Bombay State, through Mr.Heblekar the manager of the Poultry Farm Kumta called for tenders for the supply of furniture from various contractors and after scrutinising all the tenders, accepted the tender of M/s Samarth Industrial Works, Kumta, as the tender made by it was the lowest. Plff, it is said, had also offered his tender but that being for a higher amount was rejected. Thereafter M/s Samarth Industrial Works supplied the Farm with some of the items of furniture and regarding those in suit, itseems, they demanded some advance money for the purpose of executing the contract in time. The P.D.O, Bombay State, however, was not willing to make the advance and further communicated to Me.Heblekar that if he made any advance it was his respensibility to get the material without any further loss of time. After this it seems M/s Samarth Industrial Works found themselves to be unable to complete the contract in time and asked the Plff to supply the furniture on their behalf in time. This arrangement was purely inter se between M/s Samarth Industrial Works and Plff. The P.D.O.Bombay State, however never recognised this arrangement. All the while

69 7

he held M/s Samarth Industrial Works as responsible for executing the contract. So in view of the mutual arrangement between Plff and M/s Samarth Industrial Works, it seems the Plff handed over the furniture on behalf of M/s Samarth Industrial Works; but as he was not the party with whom the contract had been made the payment was made only to the M/s Samarth Industrial Works. Therefore Plff had no right to claim any payment from the Govt.

It is next urged on behalf of the Govt that even if Mr.Heblekar made any sort of purchase as alleged by Plff, he had no authority to enter into any contract on behalf of the Govt and therefore the Plff could not hold the Govt responsible for the actions of Mr.Heblekar. Thirdly it is contended that Plff was not entitled to claim any interest and alternatively that the interest claimed was high. For all these reasons the Govt prays that the Plff's suit be dismissed with costs.

3. The following issues were set down for hearing at Exh.21;

1) Whether Plff proves that Shri Heblekar, the Manager of the Govt Poultry Farm at Kumta purchased the furniture described as alleged by him ?

2) Does he further prove that Shri Heblekar was duly authorised to make such purchase from Plff on behalf of Deft ?

3) Was the alleged contract of sale valid and binding against the Deft ?

4) Does Plff prove that the Manager undertook to pay this sum of Rs.183/- to Plff on 15-8-1951 ?

5) If so, is this undertaking binding on the Deft and is the claim in time on that account ?

6) If findings on the above issues are in favour of Plff, does Deft prove that Rs.183/- had been paid to Proprietor of Samarth Company and does this payment give a valid discharge ?

7) Is Plff entitled to claim interest ? If so, at what rate and from what date ?

8) What order ?

4. Findings:

1) Yes; 2) No; 3) No; 4) Yes; 5) No;but the claim is in time.

6) Does not survive; finding if necessary, is given in the body of the judgment.

7) Does not survive; finding if necessary, is given in the body of the judgment.

8) As per order.

Reasons.

5. This suit, in my opinion, is the unhappy result of the muddle created by Mr.Heblekar by passing the sort of receipt and a chit at Exhs.43 and 44 in favour of Plff and but for these such a suit by Plff would have been impossible. It is therefore necessary for us to consider the two exhs. in the back-ground of the whole case and for that purpose it is necessary to note down briefly the whole history of the case.

6. Mr.Heblekar the Manager of the Poultry Farm Kumta it seems wanted to have some furniture for the Farm. In that connection, he moved the Poultry Development Officer, Bombay State, Poona. The said officer asked Mr.Heblekar to call for tenders from various contractors and send them to him for his approval and sanction. In accordance with the direction Mr.Heblekar called for tenders. Three persons offered their tenders and they were - the Borstal School,Dharwar, Shri Boloor and the present Plff and M/s Samarth Industrial works,Kumta. Of these the tender rates offered by M/s Samarth Industrial Works were the lowest (vide exh.48 the consolidated statement) Consequently the P.D.O. accepted the tender of M/s Samarth Industrial Works (hereafter for shortness will be referred to as Messrs Samarth) and informed about it to Mr.Heblekar and also to M/s Samarth (vide his letter at Exh.57 dated 27-8-50). The articles now mentioned in the suit with the price rates quoted were some of the articles which M/s Samarth had been ordered to furnish under the tender.

7. Thereafter M/s Samarth supplied some of the articles but the particular articles in suit remained to be supplied by them. At this stage, it seems, they demanded some advance money in order to be able to execute the contract in time. Mr.Heblekar reported about he advance demand to the P.D.O by his letter Exh.59 dated 9-1-1951. To this the officer

replied that the contractor could not be paid any advance as per Financial Rules and that if any advance was paid by the Manager, it was his responsibility to ~~xh~~ get the material without any loss of time (vide Exh.60 the letter dated 13-1-1951). After this, it seems, M/s Samarth were unable to supply the furniture in time and so the proprietor of the concern asked the present Plff to supply these on his behalf at the rates quoted in the tender. This becomes clear from the letter (Exh.75) written by the proprietor to the Manager, Poultry Farm on 15-3-1951.

8. Thereafter Plff supplied the articles of furniture on 26-7-1951 to Mr.Heblekar which Mr.Heblekar acknowledged by his receipt of even date given to Plff (vide Exh.4
While making this acknowledgment Mr.Heblekar, however, did not state therein that he received the supply from Plff as the agent of M/s Samarth. Mr.Heblekar further endorsed in the receipt that the bill had not yet been paid and would be paid by the 15-8-1951. After this, the Plff, it seems, began to press for the payment of the articles supplied, and Mr.Heblekar wrote to him another chit on 19-11-51 (Exh.44) stating that the bill was expected from Karwar that day and that immediately after its receipt he would clear off his bill. It is this latter chit which is made much of by Plff. By this chit Mr.Heblekar purported to side-track M/s Samarth the original contractor and promised to make the payment directly to Plff, who was the man who had in fact supplied the articles. According to Mr.Heblekar Plff acted as the agent of M/s Samarth. Having ~~xiwn~~ given such a commitment under Exh.44 Mr.Heblekar, it seems, committed the indiscretion of making the payment to the proprietor of M/s Samarth without keeping the Plff present on the scene or without in any way communicating the fact of payment to him. Now it ~~xwx~~ is not known whether the proprietor made the payment due to Plff. He however, in his

deposition before court at Exh.42 states that he did make the payment to Plff, but Plff on his part denied having received such payment from him. The result of this was Plff began to ~~it~~ insist upon his payment from Heblekar on the strength of the receipt Exh.43 and the chit Exh.44 that were passed by Heblekar to him. But Heblekar did not pay any heed to it. Thereafter Plff made a representation in that behalf to the Collector of Kanara, by his letter dated 18-1-1954 (Exh.45). The Collector passed on the application to the P.D.O. without giving any reply to the Plff. Plff then after waiting for some time wrote another letter to the Collector of Kanara on 2-6-1952 wherein he further complained that the payment due to him had been made to another person (vide Exh.61). This letter also was forwarded by the Collector to the P.D.O. The P.D.O. thereupon called for the explanation of Mr.Heblekar. Mr.Heblekar submitted his explanation under Exh.66 dated 16-6-1952 wherein he stated that he had not made any direct purchases from Plff that the Plff had supplied the furniture as the agent of M/s Samarth and that he payment in that connection had been made to M/s Samarth as per the contract. To the explanation offered by the Plff, the P.D.O. wrote back to Mr.Heblekar under Exh.68 dated 25-6-1952 making a query as to how Plff whose tender had been rejected already by the Dept. came to figure in the contract and whether his alleged agency of M/s Samarth had been accepted and ratified. To this Mr.Heblekar replied that the agency was duly ratified by the proprietor and that it was purely a matter between M/s Samarth and Plff, with which he had nothing to do. Upon the receipt of this reply from Heblekar the P.D.O. communicated to the Plff by his letter dated 3-7-1952 that the order for supply of furniture had been placed with M/s. Samarth Industrial Works Kumta and it had not been given to him and therefore no payment was due to be paid to him for the supply of any furniture.

The Plff further wrote a letter to the P.D.O. in that behalf insisting upon the payment on 21-8-1952 (vide Exh.72) to which again the P.D.O. gave a similar reply under Exh.73. Thereafter Plff gave a lawyer's notice through Mr.Shastri on 24-3-1954 to the Collector of Kanara demanding payment in respect of the articles (vide Exh 62). That letter was forwarded by the Collector to the P.D.O. and he gave a reply to Mr.Shastri pleader under Exh.63 dated 26-5-1954 informing him that the Plff had not been given any order for furniture by his office and therefore no payment was due to him. After the receipt of this reply Plff further gave the suit notice under Exh.64 dated 15-7-1954 to the Collector of Kanara, which again was forwarded by the Collector to the P.D.O and the P.D.O. in turn informed Plff's pleader on 5-8-1954 that the Plff was not a bonafide contractor for supply of furniture to the Govt Poultry Farm and as such theoffice could not consider the claim put up by him (vide Exh.65). After the receipt of this reply Plff came forth with this suit.

9. These in brief are the facts which form the background of this litigation. From these it can be seen that the P.D.O. who was the proper authority to make any contracts on behalf of Govt in this matter had not made any contract for the supply of furniture with the Plff; but he on the other hand had rejected his tender and had accepted the tender of M/s Samarth for the supply of those articles. It is not also Plff's case that there wan any contract between him and the P.D.O. regarding the supply of these articles. His case on the other hand is that Mr.Heblekar the manager of the Govt Poultry Farm, purchased the articles of furniture directly from him on the plea that they were required for his office use and that he Plff acted on the authority posed by Mr.Heblekar and supplied the furniture for the office use which in fact had been made use of by the office. The chief documents on which he

rests his case are the receipt Exh.43 and the chit Exh.44 passed by Heblekar to him. His further plea is that while supplying these articles of furniture to Heblekar he never acted as the agent of M/s Samarth. According to him the contract was made directly with him without any reference to M/s Samarth. He therefore submits that the Govt was liable to pay him in respect of the purchase made by one of its responsible officers from him and more especially in view of the fact that the articles purchased had been made use of by the Govt office. This in short is this case

10. I will now consider Plff's case putting it at its best on a most acceptable level. For this purpose I will assume that Mr.Heblekar the Farm Manager made the purchase of articles independently with Plff without treating him as the agent of M/s Samarth and that further Plff had not been paid his dues for the articles supplied by him. The question now is, whether the Govt is liable for he action of the Farm Manager Mr.Heblekar ? The answer to this question depends upon the finding whether Heblekar had either any express or implied authority for making the said purchase from the Plff or whether the Govt connived at the purchase made by Mr.Heblekar and gave it its indirect consent.

11. From the survey of the facts made above it can be seen that the Plff never made this contract with the P.D.O. who is the head of the Dept, but with Mr.Heblekar who was the manager of the Govt Farm at Kumta, which incidentally is also in substance the case made out by Plff. Now according to the deposition of the P.D.O. Mr.Patil at Exh.41, the manager Mr.Heblekar had not been invested with any powers of making purchases on behalf of the Govt. He is fortified in his statement by the provisions contained in sec.299 of the Constitution of India and rule 1(b) under the heading 'Orders regarding expenditure Poweres of Suprtintendents of Farms and Gardens", contained at page 7 of the Hand Book of

Accounts for the Department of Agriculture. The Poultry Farm in question is undoubtedly a branch of the Agricultural Department and as such is governed by the rule quoted above. Article 299 of the Constitution of Indis states that all contracts made in the exercise of the executive power of the Union or of a State shall be expressed to be made by the President, or by the Governor or the Rajapramukh of the State, as the case may be, and all such contracts and all such assurances of property made in the exercise of that power shall be executed on behalf of the President of the Governor or the Rajapramukh by such persons and in such manner as he may direct or authorise. Then rule 1(b) of the Account Manual quoted above, states thus: "No article of Dead Stock should be purchased without previous sanction. The Superintendents should spend on urgent repairs of any one article upto Rs.10/-. Repairs which can wait should be carried out after previous sanction of the Dy.Director of Agriculture of head of section concerned. The Dy. director or the head of the section should obtain previous sanction of the Director of Agriculture for the purposes of every article either of local or foreign manufacture, costing above Rs.100/-. In view of these provisions it can be seen that Mr.Heblekar the manager had no authority to make the purchases of the said article. The proper authority in that behalf was Mr.Patil the head of the section and he too could not have made the purchase since it cost more than Rs.100/- without the previous sanction of the Director of Agriculture. So it is clear that so far as Mr.Heblekar was concerned he had no such authority at all.

12. The evidence adduced in this case also goes to show the want of such authority in Mr.Heblekar to make the purchases. For, when these articles and some others were needed forthe Kumta Poultry Farm, Mr. Heblekar was asked by Mr.Patil to call for tenders in that behalf and

submit the quotations to him. Accordingly Mr.Heblekar took the tenders and three persons namely, the Governor of the Borstal School Darwar, the Plff and M/s Samarth and sent them for sanction. The quotations of these three persons can be found in the consolidated statement prepared by Mr.Patil'ss office at Exh.58. Mr. Patil after scrutinising the quotations, rejected the tenders of the Governor of Borstal School and of Plff.and accepted that of M/s Samarth as M/s Samarth had quoted the lowest rate of all the three The acceptance of these quotations by Mr.Patil is to be found at Exh.57. So these documents go to show that the sanctioning or accepting authority was Mr.Patil the P.D.O. and this authority had not been delegated by him at any time either expressly or impliedly to Mr.Heblekar.

13. But Plff's Pleader's submission is that the validity of a contract does not depend upon the rules framed by Govt but by the emergency or exigency of the occasion. This submission, in my opinion, is too wide and sweeping and if accepted in all its implications would lead to very startling results. The submission purports to mean that anybody from a Govt office whether he be invested with any power to make a contract or not, may make any sort of contracts with a third party under thin plea of emergency and may thus lead the Govt to practically financial ruin. I do not think the law can support such a proposition. Even on the point of emergency or exigency urged by the learned pleader there is absolutely no evidence in this case. No doubt the Poultry Farm needed some furniture for its running and perhaps it needed the furniture urgently. Even so, it cannot be urged with any force that there was any emergency or exigency as such. It could wait for some time till the necessary articles were provided by the head of the office. At worst it could have stopped doing any effective workdduring that intervening period. But this by itself is not sufficient to makerout a case for emergency or exigency. I am therefore not prepared to accept

this argument.

14. The next thing that now remains for us to see is whether Mr.Patil the head of he Dept in any way connived at the purchase made by Mr.Heblekar from the Plff, so as to spell out a case of indirect consent. Here too I find absolutely no evidence to justify the drawing of any infernece of this sort. On the other hand the evidence on record clearly goes to show that Mr.Patil never treated Plff on the footing of a legitimate contractor at time. In fact Mr.Patil came to know of the bungle made by Mr. Heblekar only when the Plff made an application to the Collector about the purchase made by Mr.Heblekar and further when Plff sent to Mr.Patil copies of the receipt and chit (Exhs.43 and 44) passed by Mr.Heblekar and demanded enquiry in that behalf. Mr. Patil then called for the explanation of Mr.Heblekar and Mr.Heblekar in his explanation submitted to Mr.Patil, disavowed of having made any contract directly with Plff and explained the whole situation saying that Plff had made the supply as an agent of M/s Samarth. Acting on this explanation Mr.Patil informed the Plff nearly thr occasions in unambiguous terms that his claim could not be considered as the Govt had not entered into in any contract with him. It is clear that Mr.Patil treated the Plff all along as an unnecessary intruder without having any real claims to payment. It cannot therefore be said that Mr. Patil at any time connived at the action of Mr.Heblekar or that he accepted the Plff's contract independently of M/s Samarth.

15. So then I fail to understand how the Govt in this case can be held liable for the action of Mr.Heblekar who acted in the matter without any authority at all. In the circumstances Plff's cause might at the most be urged favourably against Mr.Heblekar personally but not certainly against the Govt who had never authorised Mr.Heblekar to act in the matter nor had Govt at any time connived at

his action. The claim therefore given the best of consideration in Plff's favour is still bound to fail.

16. But before dismissing the suit I would record my findings on the various other contentions made in this suit. The first contention relates to the purchase made by Mr.Heblekar of the furniture from Plff and the case made out is that this purchase was made by Mr.Heblekar directly from Plff and Plff supplied the furniture on his own behalf and not as the agent of M/s Samarth. Plff's whole case in this behalf is based upon the receipt and the chit passed by Mr.Heblekar to him in this connection. The receipt and chit, if read independently without any reference to context no doubt lend an apparent support to the case made out by Plff. But when they are read in their proper context of the evidence led in this case they throw considerable doubt upon the case made out by him.. It is already in evidence that so far as Plff was concerned, his tender had been rejected,and so he was out of the picture of supplying the furniture to the Farm. That furniture was to have been supplied by M/s Samarth according to the accepted tender but M/s Samarth pleaded their inability to supply the furniture in time without some cash advance. At this stage Plff enters into the picture and he supplies the furniture. But it should be noted here that he spplied this furniture not at the rates originally quoted by him in his tender, but according to the tender rates of M/s Samarth. This fact by itself goes to show that Plff did n t supply the furniture in an independent way. Then the other thing to be noted is that the only set of articles supplied to the Farm were these articles. M/s.Samarth in their turn did not supply any articles. Then the third thing to be noted is the letter (Exh.75) of the proprietor of M/s Samarth in which he states that he had asked the Plff to supply the necessary furniture as his agent on behalf of the works of M/s Samarth. Soo all these go to indicate that Plff did not make the supply the

77

independently by himself but as the agent of M/s Samarth. Though these are the various loopholes in Plff's case still the fact remains that the Govt have not examined Mr.Heblekar to deny the case made out by Plff. The Govt perhaps thought that Mr.Heblekar having been the author of this bungle would find himself in an extremely unconfortable situation in the witness box and therefore they it seem thought fit to sail clear of him. Whatever might be the consideration that weighed with the Govt for the non-examination of Mr. Heblekar, when specific allegations had been made against Mr.Heblekar that he had entered into a contract directly with Plff, it was incumbent upon Govt, if they wanted to successfully repudiate Plff's case against Mr.Heblekar to put Mr.Heblekar in the witness box and ask him to incur the odium of his indiscretion. But the Govt tried to suggest that Mr.Heblekar was working in league with Plff. If that was so, I fail to understand why Mr.Heblekar still thrives in Govt service without any punishment for all that he has done. So I find no substance in the suggestion made by the Govt pleader and in the absence of Mr.Heblekar's contradiction of Plff's case on oath in the witness-box, I am compelled to find in Plff's favour on this point. I,therefore answer issue no.1 in the affirmative.

17. On issue no.2 I have already given finding above after discussing the evidence, that Mr.Heblekar was not a duly authorised agent of the Govt to make the purchase from Plff on behal of it. So the contract entered into by Mr.Heblekar cannot be binding on Govt. This also answers issue no.3.

18. Then the fourth point of contention is that whether Mr.Heblekar undertook to pay the sum of Rs.183/- to Plff on 15-8-1951. On this point again I must find in favour of Plff in view of Plff's evidence and Mr.Heblekar' undertaking given under receipt Exh.43 to pay the sum by

15th August. Not only that Mr.Heblekar further repeated in his chit dated 19-11-1951 that he would pay Plff's dues immediately after the receipt of the bill. So I hold issue no.4 in favour of Plff.

19. But then this undertaking given by Plff cannot bind the Govt as Govt was not a party to the contract made by Heblekar with Plff. That answers in substance issue 3.

20. But there is one more contention under that issue that the claim by Plff had become timebarred. This contention was not pressed before me at the time of argument by the Govt pleader and no argument was advanced in that behalf. Though this be so the contention seems to be that in so far as Heblekar did not pay the sum on 16-8-1951 as promised by him, the cause of action for Plff arose that day, and the suit ought to have been preferred within 3 years; but the suit having been preferred on 27-9-1954 it was time-barred. This contention cannot be validly urged in view of the further acknowledgment made by Mr.Heblekar under Exh.44 dated 19-11-1951 wherein he in substance acknowledged the dues of Plff and promised to pay it on that day immediately after the receipt of the bill by tapa. So the cause of action would get a fresh start in this case from 19-11-1951 from which date the claim is in time. The suit therefore is not bad on that account though at the same time I must say that the undertaking given by Heblekar cannot be binding upon the Govt. This answers issue no.5 in full.

13. Then we come to issue no.6 which is on the supposition that all the above issues are answered in favour of Plff. But then on all the above issues the finding is against Plff so far as his claim against Govt is concerned. So this issue does not survive at all for consideration. But a finding if still be required on this issue, it will have to be considered from two aspects. The Govt in this case pleads that it had made the payment to the rightful contractor -

35
79

M/s Samarth and that payment to M/s Samarth was binding on Plff. Now so far as the payment to M/s Samarth is concerned it is no longer in dispute. It is even partially admitted by Plff himself and further clearly admitted by the proprietor of the M/s Samarth who has been examined at Exh.42 in this case. In addition there is also the receipt at Exh.76 to support the payment. But the question is whether this payment to M/s Samarth will be binding on Plff. Now this would be binding on Plff if Plff is treated as the agent of M/s Samarth. But in the case Plff is not treated as the agent of M/s Samarth, which is what I have found in issue No.2 1, it cannot be binding on Plff. That would be my answer to the issue.

14. There now temains the last contention as to interest. Plff has claimed Rs.5-7-0 at the rate of 6 p.c. from 24-3-1954 the date of first notice to the collector till date of suit and this he purports to claim by way of damages. The interest claimed is not at all high. It is a very negligible sum and I fail to understand why Plff should not be awarded this little sum by way of damages if his claim were to succeed. Finding accordingly.

15. But I cannot grant Plff's claim for the reasons already given by me. I must therefore dismiss Plff's suit.

16. A word about costs. According to the ordinary rule of law Plff since he has failed, will have to bear his own costs and pay that of Deft. So far as this goes there is no dispute. The only dispute is to the inclusion of the costs of Mr.Patil the P.D.O. in the bill of costs against Plff. The costs of examining Mr.Patil as stated in the bill, produced in this case have come to Rs.74-2-0. Mr.Patil was brought all the way from Poona where his office is situate and examined in this case as witness for the Govt. But in my opinion and also as rightly submitted by Plff's pleader Mr.Patil practically is Deft's representative and hence he occupies more or less the position of a party

in this case though literally not so. Now party costs are not allowed in the billof costs. I therefore accept Plff's pleader's submission on this point and disallow Mr.Patil's costs from the bill of costs. Subject to this I allow the costs of the Govt.

O r d e r.

Suit dismissed with costs but with this modification that the costs of he examination of Patil,the Poultry Development Officer having been disallowed should not be included in the bill of costs against Plff.

12th August 1955.

Sd.M.M.Shirkol,
Civil Judge,Senior Division.

87

Suits:
Kanara.
For the recovery of the amount of Rs.183/- being the price of the furniture and interest of Rs.15-7-0 together with costs.

GOVERNMENT OF BOMBAY.
Legal Department.
Resolution No. 2-9122/55
Sachivalaya, Bombay,
28th December 1955.

Read Government Resolution, Legal Department No.1917/E dated the 30th August 1955.

Letter from the District Government Pleader, Kanara No.1126 dated the 22nd December 1955, stating that the suit

In the Court of the Civil Judge, (Senior Division), Karwar. Civil Suit No.149 of 1954.	:	noted in the margin was decided by the District Judge, on the
R.K.Boloor .. .... Plaintiff. Vs. The State of Bombay. .... Defendant.	:	

when the following order was passed :-

"Suit dismissed with costs but with this modification that the costs of the examination of Patil, the Poultry Development Officer having been disallowed should not be included in the bill of costs against plaintiff."

Letter from the District Government Pleader, Karwar, No. 1126, dated the 22nd December 1955, forwarding uncertified copies of the judgment and decree.

RESOLUTION:- The result of the suit is recorded.

By order and in the name of the
Governor of Bombay,

original. 28/12

D.P. SHIKHARE,
Deputy Secretary to Government.

To
The Agriculture and Forests Department,
The Director of Agriculture, Bombay State, Poona,
The District Government Pleader, Kanara. (with pps. received from him under no.725 dated the 12/8/55)

K.28.

Submitted for Signature
28/12
[Init dt] D.S.(Civil)

Issued 28/12

82